



WILDLANDS DEFENSE

188 IBLA 68

Decided June 30, 2016



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Office of Hearings and Appeals
Interior Board of Land Appeals
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WILDLANDS DEFENSE

IBLA 2016-55

Decided June 30, 2016

Appeal from an October 13, 2015, decision of the Bureau of Land Management to add chaining and mastication as a fire management treatment option within the “Upper Spruce Spring Treatment Area” of the Spruce Mountain Restoration Project Area. DOI-BLM-NV-E030-2015-0020-DNA.

Affirmed.

1. National Environmental Policy Act of 1969: Determination of NEPA Adequacy;
National Environmental Policy Act of 1969: Environmental Assessments

A Determination of NEPA Adequacy (DNA) is an acceptable method for BLM to assess the adequacy of existing environmental analysis for a proposed action, but a DNA is not a NEPA document and thus may not be used to supplement an existing environmental analysis or to address site-specific environmental effects not previously considered. When a DNA relies upon a prior Environmental Assessment (EA), BLM must determine whether the existing analysis took the appropriate hard look at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. Under the Department’s regulations, BLM may use an existing EA in its entirety if BLM determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives.

2. National Environmental Policy Act of 1969: Determination of NEPA Adequacy;
National Environmental Policy Act of 1969: Environmental Assessments

To meet its burden on appeal concerning NEPA, an appellant challenging BLM's decision, which relied upon a previous EA, bears the burden of demonstrating, by a preponderance of the evidence and with objective proof, that BLM's decision is based upon a clear error of law or demonstrable error of fact, that the EA failed to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to comply with Section 102(2)(C) of NEPA and its regulations.

APPEARANCES: Katie Fite, Boise, Idaho, for Wildlands Defense; Janell M. Bogue, Esq., Office of the Regional Solicitor, Pacific Southwest Region, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Wildlands Defense (Wildlands) appeals from an October 13, 2015, Decision Record (2015 DR) issued by the Wells Field Office (Nevada), Bureau of Land Management (BLM). The 2015 DR is a wildfire management decision, which was effective immediately.¹

In the 2015 DR, BLM decided to add chaining and mastication to the list of viable wildfire management treatment methods available to control pinyon-juniper and cheatgrass within the Upper Spruce Spring Treatment Area (Upper Spruce) of the Spruce Mountain Restoration Project Area (Spruce Mountain). BLM prepared a Determination of NEPA² Adequacy (DNA) and concluded that the 2012 Spruce Mountain Environmental Assessment (EA) adequately analyzed the potential impacts of its decision.³

¹ 2015 DR at 2 (citing 43 C.F.R. § 4190.1 (effect of wildfire management decisions)); *see* 43 C.F.R. § 4.416 (Board must decide the appeal “within 60 days after all pleadings have been filed, and within 180 days after the appeal was filed.”).

² National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370h (2012).

³ DOI-BLM-NV-E030-2015-0020-DNA; DOI-BLM-NV-E000-2011-0501-EA.

I. Summary

Appellant challenges BLM's decision to implement the proposed wildfire management project, asserting that BLM's environmental analysis for the decision was inadequate under NEPA. As discussed below, the appellant has offered only conclusory allegations of error or mere differences of opinion. Therefore, the appellant has not satisfied its burden of demonstrating, by a preponderance of the evidence and with objective proof, that the EA, on which the DNA relies, fails to consider a substantial environmental question of material significance to the proposed action. Accordingly, we affirm BLM's decision.

II. Legal Framework for Appellant's Challenges

[1] A DNA is an acceptable method for BLM to assess the adequacy of an existing EA for a proposed action, but a DNA is not a NEPA document and may not be used to supplement an existing environmental analysis or to address site-specific environmental effects not previously considered.⁴ Under the Department's regulations, BLM may use an existing EA in its entirety if BLM determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives.⁵ Departmental regulations provide, "[t]he supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects."⁶

[2] To meet its burden on appeal concerning NEPA, an appellant challenging BLM's decision, which relied upon a previous EA, bears the burden of demonstrating, by a preponderance of the evidence and with objective proof, that BLM's decision (1) is based on a clear error of law or demonstrable error of fact, (2) failed to consider a substantial environmental question of material significance to the proposed action, or

⁴ *Nora L. Hamilton*, 179 IBLA 132, 141 (2010); *Town of Crestone*, 178 IBLA 79, 83 (2009); *Southern Utah Wilderness Alliance (SUWA)*, 177 IBLA 29, 33-34 (2009); *Colorado Environmental Coalition*, 173 IBLA 362, 372 (2008); see *The Coalition of Concerned National Park [Service] Retirees*, 169 IBLA 366, 370 (2006).

⁵ 43 C.F.R. § 46.120(c).

⁶ *Id.*; see also *Hamilton*, 179 IBLA at 141 ("If the EA does not adequately address a relevant environmental concern, or if significant new circumstances or information have arisen to require that the EA be supplemented, BLM cannot rely on a DNA") (citing *SUWA*, 177 IBLA at 34; *Center for Native Ecosystems*, 174 IBLA 361, 366-67 (2008); *Colorado Environmental Coalition*, 173 IBLA at 372).

(3) otherwise failed to comply with Section 102(2)(C) of NEPA or its regulations.⁷ Mere differences of opinion provide no basis for reversal of BLM's decision.⁸

Under Section 102(2)(C) of NEPA, federal agencies must prepare a detailed statement -- an Environmental Impact Statement (EIS) -- for "major Federal actions significantly affecting the quality of the human environment."⁹ An agency may prepare an EA to "briefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or a [Finding of No Significant Impact (FONSI)]."¹⁰ If the EA leads the agency to conclude that the proposed action will not significantly affect the environment or that any significant impacts can be mitigated to insignificance, the agency may issue a FONSI and forego the further step of preparing an EIS.¹¹ Determining the significance of the impacts of a proposed action "requires considerations of both context and intensity."¹²

The Board will uphold a BLM decision to proceed with a proposed action, absent preparation of an EIS, under Section 102(2)(C) NEPA, where the record demonstrates that BLM has considered all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures.¹³ An appellant seeking to overcome such a decision must carry its burden of demonstrating, by a preponderance of the evidence, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by Section 102(2)(C) of NEPA.¹⁴

⁷ *Town of Crestone*, 178 IBLA at 83-84 (quoting *Coalition of Concerned National Park [Service] Retirees*, 169 IBLA at 369); *SUWA*, 177 IBLA at 34.

⁸ *SUWA*, 177 IBLA at 34; see also *Town of Crestone*, 178 IBLA at 83-84; *National Park [Service] Retirees*, 169 IBLA at 369.

⁹ NEPA, § 102(2)(C), 42 U.S.C. § 4332(2)(C) (2012).

¹⁰ *Great Basin Resource Watch*, 185 IBLA 1, 20 (2014) (quoting *Comm. To Preserve Boomer Lake Park v. Dep't of Transp.*, 4 F.3d 1543, 1554 n.9 (10th Cir. 1993)); see *Oregon Natural Desert Association (On Remand)*, 185 IBLA 59, 120-24 (2014) (citing 40 C.F.R. § 1508.9 and *Bales Ranch, Inc.*, 151 IBLA 353, 358 (2000)).

¹¹ *Great Basin Resource Watch*, 185 IBLA at 20 (citing 40 C.F.R. § 1501.4(e) and Federal court and Board cases).

¹² *Id.* (quoting 40 C.F.R. § 1508.27).

¹³ *WildEarth Guardians*, 182 IBLA 100, 105 (2012).

¹⁴ *Town of Crestone*, 178 IBLA at 83-84; *SUWA*, 177 IBLA at 34; *National Park [Service] Retirees*, 169 IBLA at 369; see also *WildEarth Guardians*, 182 IBLA at 105, 106.

III. *Factual and Procedural Background*

In the EA, issued June 12, 2012, BLM evaluated environmental impacts of fire management treatment options to control pinyon-juniper and cheatgrass.¹⁵ BLM analyzed chaining and mastication, among other treatment options, and their impact on special status species and other resources.¹⁶ On July 20, 2012, BLM issued a FONSI. The same day, BLM issued the 2012 DR, approving the Spruce Mountain Restoration Project. The 2012 DR selected chaining and mastication treatments for some units adjacent to Upper Spruce.¹⁷

WWP appealed the 2012 DR, arguing that BLM violated NEPA by failing to adequately evaluate environmental impacts in the EA and, in the alternative, by failing to undertake an Environmental Impact Statement (EIS).¹⁸ In 2013, the Board adjudicated the appeal, affirming BLM's 2012 DR, finding WWP had not preponderated (*i.e.*, proved by a preponderance of the evidence) in showing error in the decision.¹⁹ Wildlands was not a party to that appeal.

In the 2015 DR at issue in this appeal, BLM decided to add chaining and mastication as treatment options for Upper Spruce.²⁰ Wildlands timely appealed. In its appeal, Wildlands argues that BLM violated NEPA by failing to prepare an EIS, take a “hard look” at the environmental impacts of the proposed action, and adequately address the cumulative impacts of the proposed action. Wildlands also argues that BLM violated the Federal Land Policy and Management Act (FLPMA) by failing to ensure that management of the public lands will best meet the present and future needs of the American people and by authorizing actions inconsistent with the governing land use plan.

IV. *BLM Took the Requisite “Hard Look” at Environmental Impacts in the EA*

Wildlands contends BLM violated NEPA by failing to take a hard look at the impacts of chaining and mastication in the Upper Spruce treatment area. In particular, Wildlands argues BLM erred in relying on a DNA and violated NEPA by failing to prepare an EIS based on the significant impacts of the proposed action on numerous resources, including cultural, historical and wildlife resources.²¹

¹⁵ DOI-BLM-NV-E000-2011-0501-EA.

¹⁶ *Western Watersheds Project (WWP)*, IBLA 2012-268, Order (Apr. 18, 2013) at 3.

¹⁷ DNA at 2.

¹⁸ WWP, IBLA 2012-268 (Apr. 18, 2013).

¹⁹ *Id.* at 6-7.

²⁰ *See* DNA at 1.

²¹ Statement of Reasons (SOR) (filed Feb. 1, 2016) at 16-21.

Wildlands asserts BLM failed to take a hard look at all of the impacts of its decision because it did not rely on current forest science but on what they characterize as “outdated” papers.²² Wildlands also contends that BLM exaggerated the risk of fire and downplayed the risk of deforestation.²³ BLM responds that these arguments represent a mere difference of opinion.²⁴ We agree, and Wildlands provides insufficient support for these assertions.

Wildlands also asserts BLM failed to take a “hard look” at environmental impacts of the proposed action, by allegedly declining to examine stand characteristics, the historical record, impacts of large-scale disturbance of these treatments coupled with livestock grazing, off-highway vehicles (OHVs) and other disturbances, impacts on cultural and historical resources, and big game.²⁵ This is incorrect. Review of the EA indicates BLM adequately considered stand characteristics,²⁶ the historical record,²⁷ livestock grazing,²⁸ and OHVs,²⁹ in addition to other perceived disturbances, and also took a hard look at impacts on cultural and historical resources.³⁰ We similarly reject Wildlands’ unsupported assertion that BLM failed to consider that big game rely on forested communities in the area, which is crucial mule deer winter habitat,³¹ finding the EA reveals BLM took the requisite “hard look” at impacts on mule deer.³²

Wildlands further asserts that BLM was “blind to forest values,” in authorizing “the waste, damage, destruction and ‘take’ of live mature and old growth trees in the immense new chainings at Spruce,”³³ but our review of the EA indicates BLM conducted a thoughtful evaluation of relevant impacts on the environment. In its Reply, Wildlands claims that BLM violated NEPA by declining to include, in the EA, consideration of the loss of the trees’ value to the taxpayers.³⁴ However, BLM was not required to examine every conceivable impact of the project. “By nature, [an EA] is intended to be an

²² SOR at 17.

²³ *Id.* at 11-12.

²⁴ *See Answer* at 7-9.

²⁵ SOR at 9-13, 18.

²⁶ *E.g.*, EA at 133-34 (discussing the impacts of chaining and mastication on habitat characteristics); *see also, e.g., id.* at 1-2.

²⁷ *Id.* at 1-2, 5-6, 26, 28, 46.

²⁸ *Id.* at 46-47.

²⁹ *Id.* at 47-48, 89.

³⁰ *Id.* at 14, 19-20, 74-75, 98.

³¹ SOR at 12-13.

³² EA at 2, 5-7, 16, 20, 28, 65, 132-34.

³³ SOR at 7.

³⁴ Reply at 1-2.

overview of environmental concerns, *not* an exhaustive study of all environmental issues which the project raises.”³⁵ The EA’s extensive analysis of impacts on pinyon-juniper and other resources is sufficient under NEPA.

Wildlands points to a study summarized in the December 2015 issue of the journal, *Nature Climate Change*, indicating that juniper and pinyon trees are increasingly susceptible to drought and die-off, and to a December 2014 research paper discussing livestock grazing’s impact on climate change, suggesting BLM erred in not supplementing the EA to consider this information.³⁶ Departmental regulations provide that when using an existing EA to support a proposed action, “[t]he supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.”³⁷

In this instance, we do not find that BLM erred by relying on the existing EA without evaluating such new information. Merely citing to studies does not demonstrate error in the agency decision, nor satisfy appellant’s burden to preponderate in showing that BLM violated NEPA by failing to prepare an EIS to consider a significant matter of environmental concern relevant to the Proposed Project. Without providing the nexus between general information in studies and its relevance to site-specific impacts from the Proposed Project, appellant’s allegations concerning recent studies are no more than assertions of remote and highly speculative impacts, which BLM has no duty under NEPA to analyze.³⁸ Such allegations do not satisfy appellant’s burden to make an “affirmative showing that BLM failed to consider a substantial environmental question of material significance.”³⁹ As we have explained:

³⁵ *Citizens of Dixon, New Mexico*, 186 IBLA 350, 351 (2015); *Oregon Natural Desert Association (On Remand)*, 185 IBLA at 120; *WildEarth Guardians*, 182 IBLA at 105.

³⁶ See SOR at 14 (citing the article entitled, “Evergreens in Southwest U.S. at risk: Climate change scenarios point to widespread tree death in Southwest forests, researchers say,” in the journal *Nature Climate Change*, available at <http://www.nature.com/nclimate/journal/v6/n3/full/nclimate2873.html> (last visited June 6, 2016)).

³⁷ 43 C.F.R. § 46.120(c).

³⁸ See, e.g., *Coalition for Responsible Mammoth Development*, 187 IBLA 141, 187-88 (2016); cf. *Biodiversity Conservation Alliance*, 183 IBLA 97, 123 (2013) (appellant’s mere notation, without concrete analysis, was insufficient to challenge BLM’s cumulative impacts analysis).

³⁹ *Biodiversity Conservation Alliance*, 183 IBLA at 114 (quoting, *inter alia*, *In re Stratton Hog Timber Sale*, 160 IBLA 329, 332 (2004)).

It is not enough to cite to general scientific literature without making any effort to relate such scientific information to the proposed action and the circumstances under which it will occur, or otherwise demonstrate its relevance to the environmental consequences of that action. Mere citation does not demonstrate that BLM failed to properly understand the expected consequences of the proposed leasing, or to fully appreciate its significance, and thus does not establish a violation of NEPA.^[40]

Wildlands makes numerous other summary allegations of BLM failures to take a “hard look.”⁴¹ Having extensively reviewed the EA and the FONSI, the Board finds that Wildlands has not demonstrated, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action or that BLM otherwise failed to abide by Section 102(2)(C) of NEPA.

V. *BLM Did Not Ignore Cumulative Impacts*

Wildlands contends BLM ignored cumulative impacts.⁴² To the contrary, the EA shows BLM provided extensive analysis of cumulative impacts.⁴³ Although Wildlands may wish for even more analysis, this EA provides a very adequate overview of environmental concerns.⁴⁴ Here too, Wildlands has not demonstrated a clear error of law or demonstrable error of fact, or that the EA fails to consider a substantial environmental question of material significance to the proposed action.

VI. *BLM Did Not Violate FLPMA or the RMP*

Finally, Wildlands posits that BLM violated FLPMA⁴⁵ and the governing Resource Management Plan (RMP) by allegedly failing to undertake any appropriate analysis of competing resource values to ensure that public lands are managed in the manner that will best meet the present and future needs of the American people, and in authorizing

⁴⁰ *Id.* at 122 (citing *Biodiversity Conservation Alliance*, 171 IBLA 218, 228-29 (2007); *Biodiversity Conservation Alliance*, 169 IBLA 321, 343 (2006)).

⁴¹ SOR at 19-21.

⁴² *Id.* at 21-22.

⁴³ See EA at 71-143.

⁴⁴ See, e.g., *id.* (extensive analysis of cumulative impacts in the EA); see also *Citizens of Dixon, New Mexico*, 186 IBLA at 351; *Oregon Natural Desert Association (On Remand)*, 185 IBLA at 120; *WildEarth Guardians*, 182 IBLA at 105 (Board decisions discussing what constitutes an adequate EA).

⁴⁵ See FLPMA, § 302(a), 43 U.S.C. § 1732(a) (2012).

actions inconsistent with the RMP.⁴⁶ Wildlands provides no support for its litany of allegations on this topic. Rather, Wildlands simply identifies FLPMA's requirement that BLM manage the public lands in accordance with the principles of multiple-use and sustained yield, and then asserts BLM failed to conduct various studies and analyses and to ensure that these principles are met in carrying out the proposed project.⁴⁷ Therefore, we agree with BLM that Wildlands "offers merely conclusory statements and a laundry list of perceived errors," "but does not cite to any objective evidence for support" of its argument.⁴⁸

VII. Conclusion

Appellant's unsupported, conclusory allegations of error and their expressions of differences of opinion with BLM are inadequate to satisfy their burden of demonstrating, by a preponderance of the evidence and with objective proof, that the EA, on which the DNA relies, fails to consider a substantial environmental question of material significance to the proposed action. Accordingly, we will affirm BLM's decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,⁴⁹ we affirm BLM's 2015 DR.

/s/

Christina S. Kalavritinos
Administrative Judge

I concur:

/s/

Amy B. Sosin
Administrative Judge

⁴⁶ SOR at 22-25.

⁴⁷ *See id.*

⁴⁸ Answer at 11.

⁴⁹ 43 C.F.R. § 4.1.